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Mr. Paul Marshall  
California Department of Water Resources  
Bay-Delta Office  
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Sacramento, Ca. 94236-0001

Subject: Notice of Preparation of a Draft Environmental Impact Report/Environmental Impact Statement for the South Delta Improvements Program, an implementation action of the CALFED Bay-Delta Program.

October 28, 2002

Dear Mr. Marshall:

The Regional Council of Rural Counties (RCRC), an organization representing 29 of California's 58 counties, through this letter, offers comments on the above referenced document as authorized per California Environmental Quality Act (CEQA) Guidelines sec. 15044.

**Statement of statutory responsibilities and interests –**

RCRC's member counties are the land management agencies responsible for development and implementation of comprehensive land use and resource plans as required by state law. In addition, these counties have the authority to, and many have passed ordinances to protect and regulate, groundwater and/or surface water resources. Each of the Counties is also the entity charged with implementing the California Environmental Quality Act as a Lead Agency on a broad diversity of projects. In addition, the increased water exports which would be enabled by this project action could come from water sources within RCRC member Counties. Some of those Counties should reasonably be expected to make claim under the Area of Origin Statutes for additional water supplies for their local area, which could be the same water sources used for increased export water in this proposal. Therefore, the South Delta Improvements Program specifically, and the proposed increase in exports under the Calfed Bay-Delta Program generally, could be in conflict with the objectives and intentions of upstream Area of Origin demands.

Further, it is our understanding that the South Delta Improvements Project is only a portion of a much larger Calfed Program which is "balanced" between water supply and ecosystem restoration actions. Additionally, the program must be developed and implemented in total - that is not fragmented into portions - and implemented piecemeal. We therefore refer you to our comments of 6/17/02 directed with regards to the Environmental Water Account Project (SCH #1996032083) proposal and the anticipated (and now we believe, cumulative) impacts resulting from that action upon the RCRC membership area. The cumulative impacts of the total Calfed Program, and not just each element must be addressed in this document CEQA Guidelines sec. 15355, 15065(c) and 15130. Furthermore, a full range of alternatives for these actions (both in this proposal and in the EWA as referenced) must be evaluated within that cumulative framework CEQA Guidelines sec. 15126.6.

For the reasons described above, RCRC's members are not only interested parties in these proceedings due to their statutory authority and responsibilities under California law, but also because their environments, citizens and economic viability may be adversely affected by the proposed project.

### **Calfed Bay-Delta Program is a comprehensive proposal -**

The proposed project will require the preparation of a joint EIR/EIS and that the two lead agencies will respectively be the California Department of Water Resources and the U.S. Bureau of Reclamation. The document to be prepared will facilitate the implementation of the South Delta Improvements Project as described in the Programmatic Record of Decision (ROD) for the CALFED Bay-Delta Program, dated 8/28/2000. *"The Preferred Program Alternative is made up of the Levee System Integrity Program, Water Quality Program, Ecosystem Restoration Program, Water Use Efficiency Program, Water Transfer Program, Watershed Program, Storage and Conveyance. Actions described are intended to take place in an integrated framework and not independently of one another. While each program element is described individually, it is understood that only through coordinated, linked, incremental investigation, analysis and implementation can we effectively resolve the problems in the Bay-Delta System."*<sup>1</sup>

We wish to point out that the SDIP project is a CALFED implementation action. The ROD in and of itself cannot create the authority to carry out the CALFED Program. Indeed, the ROD states, *"The commitments of the United States and of the State of California under this ROD are necessarily contingent upon the availability of appropriate funds or upon enactment of authorizing legislation..."*<sup>2</sup>

There is no authorization for the CALFED Program at the federal level. Therefore, under what specific authority is the SDIP Project being carried out?

This question is especially salient as per the ROD, *"California taxpayers, stakeholders and the Federal Government will be called upon to invest billions of dollars over the next decade on CALFED programs. Expenditure of those funds must be based upon accountability and*

<sup>1</sup> CALFED Bay-Delta Program, Programmatic Record of Decision, 8/28/2000, pg. 16

<sup>2</sup> CALFED Bay-Delta Program, Programmatic Record of Decision, 8/28/2000, pg. 4.

*measurable progress being made on all elements of the Program.*"<sup>3</sup> The CALFED Program was intended to be implemented in whole and not piecemeal. The SDIP, as a portion of the ROD, should be authorized and implemented as part of a greater whole, not selectively implemented in a manner that would be unbalanced.

*"All aspects of the CALFED Program are interrelated and interdependent. Ecosystem Restoration is dependent upon water supply and conservation. Water supply depends upon water use efficiency and consistency in regulation. Water quality depends upon improved conveyance, levee stability and healthy watersheds. The success of all the elements depends upon expanded and more strategically managed storage."*<sup>4</sup>

We wish to underscore that public funds are being used to essentially subsidize a water supply for one portion of the state, to the potential detriment of the environment and other water users. Further, the method to increase water supplies to specific parties within the State is being done without full consideration of alternative methods of supplying the same amount of water, through other means such as; investments in recycling, reclamation, groundwater cleanup, desalination of groundwater and ocean water, and surface/storm water runoff capture, treatment, and use for groundwater recharge (CEQA Guidelines sec. 15021(a)(2)). We urge that the document clearly explain why these alternative forms of supply were rejected, who made the decision to reject them, and where the funds will come from to pay for SDIP and who the beneficiaries are from this action. All of these details are part of the required project description for CEQA. The ROD (see page 3) identifies Governance as a component of the CALFED Program.<sup>5</sup>

#### **Proposed Project may be in conflict with Calfed Water Quality Program -**

*"The CALFED Program is committed to achieving continuous improvement in the quality of the waters of the Bay-Delta system with the goal of minimizing ecological, drinking water and other water quality problems. Improvements in water quality will result in improved ecosystem health, with indirect improvements in water supply reliability."*<sup>6</sup> See following comments related to water quality.

#### **Water Quality for Environment and human use from Delta may be reduced -**

We urge that this analysis clearly identify the existing water quality data for both environmental and municipal and agricultural use. Further, the measurements should not focus on just salinity, but also include other significant water quality problems such as; dissolved oxygen levels in the South Delta, PCB, dioxin and methyl-mecury bioaccumulation. We also urge that CALFED model the effect of redirected selenium loads into the Delta. The importance of the CALFED objective of continuous

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<sup>3</sup> IBID

<sup>4</sup> IBID

<sup>5</sup> CALFED Bay-Delta Program, Programmatic Record of Decision, 8/28/2000, pg. 3.

<sup>6</sup> CALFED Bay-Delta Program, Programmatic Record of Decision, 8/28/2000, pg. 17.

improvement of water quality in the Delta cannot be made subservient to a "need" to increase export limits. Finally, the proposed environmental analysis should provide a clear, understandable and scientifically supported finding regarding SDIP operations and compliance with the Clean Water Act.

This must be done against a backdrop of data gathered from adequate monitoring and reporting. The importance of this point cannot be understated. Absent this information, conclusions and the relative effectiveness of proposed mitigation would simply be educated speculation. We believe an effective monitoring and reporting program for this proposal should be included within the body of the EIS/EIR (Pub. Res. Code sec. 21081.6(a), CEQA Guidelines sec. 15091(d) and 15097). This will allow the public to review and comment on the monitoring program. This should, potentially, result in improved mitigation effectiveness, data collection and reporting. Given the emphasis within the CALFED Program for "adaptive management" it is critical to include the suggested analysis.

**Clarify and document the effectiveness of the fish barriers at the Old River (San Joaquin) -**

The SDIP proposal incorporates the use of barriers on the San Joaquin River to allow increases in exports while hoping to avoid out migration problems. We would like to see the analysis incorporate any recent fish telemetry data analysis carried out either independently by agencies, or by CALFED, which would clarify the effectiveness of this hypothesis. Absent such information, the environmental analysis should include a specific reference to the data supporting assertions (inclusion of the data would be helpful) that the barriers would be effective.

Clarify the linkage and timing for the construction of the fish screens in the South Delta with the SDIP export schedule. The CALFED Record of Decision called for construction of a new screened intake at Clifton Court Forebay and a new screened diversion at Tracy (CALFED ROD page 23). The Analysis must clarify what specific improvements are to be made for the purposes of fish screening as part of the SDIP and further what evidence exists to support their relative effectiveness.

It is our understanding of the record that the no jeopardy decision issued and incorporated in CALFED by the U.S. Fish and Wildlife Service was dependent upon the installation and effectiveness of these screen facilities. If they are not built or are not effective, what will the status of the no jeopardy decision (as a CALFED assurance) be?

We also request that the analysis determine whether the installation of the barriers and the operation (increased pumping) of the SDIP will simply redirect the "draw" for water back from the San Joaquin River through the Turner Cut. If this should occur what would the resulting impacts be to fisheries as well as water quality?

Further, the analysis must clarify the timing of the construction of the screens relative to the timing of the increase export schedule. The must not be a bifurcation of the installation process such that the export increases begin in advance of the screen

installation, testing and operations. Mitigation, or project modification to reduce impacts, should occur in advance of the actual anticipated impacts to lessen or avoid the impacts - not after the impacts have already occurred. The lead agencies hold this duty (CEQA Guidelines, sec. 15041) and may not use staging or scheduling to avoid it. Also please see our earlier comments regarding incorporation of mitigation monitoring (and implicitly baseline data) and reporting as they would apply to this section.

### **Role of SDIP and operations of Oroville Reservoir -**

Oroville Reservoir is a significant regional recreation destination. The Environmental Analysis should incorporate estimates of what potential impacts the implementation of the SDIP will have on water levels and recreational activities of Lake Oroville. These estimates should include both short term and long-term implications which cumulatively incorporate other portions of the CALFED program such as additional south of Delta storage.

### **Potential impacts on future upstream water supplies -**

The SDIP operation is intended to increase Delta exports from the Bay-Delta Watershed. We believe that CEQA requires a full and complete disclosure of the potential impacts such exports may have on existing upstream reservoir operations and water supplies. The analysis should clarify what role, if any, upstream (non-SWP) reservoirs and diversions may have in "back filling" any SDIP induced degradation in Bay-Delta water quality (CEQA Guidelines sec. 15358(2)).

Specifically, are there any linkages between the SDIP and water acquisitions proposed as part of the CALFED Program? If so, what is the total subsidy being paid to export water users (directly and indirectly) through the implementation of the CALFED Record of Decision and specifically the Environmental Water Account coupled with SDIP?

Will the SDIP require the acquisition of additional water for the EWA? If so what amounts and from where?

*"As new water projects are built, the appropriate amounts of Tier 2 and Tier 3 water are likely to increase. Where possible the additional EWA water should be built into the cost of the new projects and thus borne by the beneficiaries of the new projects."*<sup>7</sup>

Finally, we wish to be assured that the proposal (when seen cumulatively as part of the Joint Point of Diversion and the new priority for deliveries to certain Reclamation contract holders on the West Side of the San Joaquin Valley, will pose no threat, compromise or barrier to the implementation to the Trinity River Restoration proposal.

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<sup>7</sup> First Annual Review of the Environmental Water Account for the CALFED Bay-Delta Program, EWA Review Panel, Page 20 & 21.

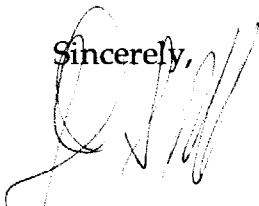
**Incorporate all project proposals (in the form of a comprehensive project description) data from other analysis in development or available relative to water supply, water quality of the Delta (environmental and consumptive use), water acquisitions and EWA operations which are a part of the CALFED Bay-Delta Program, or are anticipated to be implemented as part of the CALFED Bay-Delta Program during it's thirty year implementation in this analysis -**

We request that this environmental analysis incorporate all relevant data that may be being developed through other CALFED environmental and scientific efforts as well as those of the various CALFED member and participating agencies. This should include at a bare minimum, CVPIA monitoring and analysis, SWRCB Water Quality Control Board Bay Delta proceedings and CALFED's other ongoing analysis for the Environmental Water Account. In addition, since this project is part of the CALFED Bay-Delta Program, a 30 year schedule for implementation, we request that this analysis include a list of all anticipated future CALFED projects which may lead to cumulative impacts related to the subject matter of the report (CEQA Guidelines sec. 15130(b)(1)) and whatever level of estimate of potential cumulative impacts is possible at this time.

This is especially critical so that CALFED does not fragment, or piecemeal the presentation of all of the proposed projects and likewise conduct incremental and inadequate analysis insofar as meeting the cumulative impact assessment test.

Thank you for the opportunity to provide these comments and we look forward to reviewing the draft environmental document.

Sincerely,



John S. Mills